Madam Chairwoman and Members of the Subcommittee:

I am pleased to have this opportunity to share with this Subcommittee my views on H.R. 12039 and H.R. 169.

I will begin by discussing subsection 2 of H.R. 12039. This provision would require agencies to inform "each person" who was the subject of any warrantless or non-consensual mail intercept, electronic surveillance, or surreptitious entry, or who was the subject of a file or named in an index in connection with the so-called CHAOS, COINTELPRO, or "Special Service Staff" programs. Such notice would provide persons contacted with a statement of their right to access under the Freedom of Information Act and Privacy Act and their right to request amendment of records under the Privacy Act. It would also provide them with the option of requiring destruction of records. The Privacy Act applies to citizens and permanent resident aliens, and it is presumed that H.R. 12039 is intended to have the same scope.

It is my understanding that the testimony of the Department of Justice will deal with the legal and practical problems which the proposed notification procedures would raise with respect to electronic surveillance, surreptitious entry, and the so-called COINTELPRO operation. I would like to discuss H.R. 12039 in relation to the two Agency programs covered by the bill, namely, the so-called CHAOS program and the mail intercept program.

Both of these programs are described in the Rockefeller Commission Report on CIA Activities within the United States. The CHAOS program was an effort to determine the extent of foreign influence on elements of the American anti-war and radical left movements. As conceived, this program was a proper foreign intelligence activity within the charter of the Agency. Contrary to its original purpose, however, the operation in practice resulted

in some improper accumulation of material on legitimate domestic activities. Most of this information was gleaned from overt sources and from other Government agencies, particularly the FBI. Only a very small fraction of reporting on the activities of American citizens in the United States was done by CIA. The program was terminated by order of Mr. Colby in early 1974. The mail intercept program, which began in the early 1950's, primarily involved the examination of mail sent to and received from the Soviet Union and other communist countries. In most cases, the envelopes were photographed but not opened. Mr. Colby terminated this program in 1973. The CHAOS and mail intercept programs are distinguished from the other operations and activities mentioned in H.R. 12039 by the fact that they were strictly collection programs and did not involve any type of positive action against their subjects.

In my view, Madam Chairwoman, the notification procedures proposed in H.R. 12039 raise questions of practicality, necessity, and consistency with the spirit of the Privacy Act itself.

An Agency-initiated notification program of the individuals contemplated in H.R. 12039 would be unworkable. Because the CHAOS program was not designed to identify individuals, but rather to examine the possibility of foreign connections with certain kinds of activity, most of the information collected or maintained under the program is not complete enough to sufficiently identify or locate the individuals concerned. The program resulted in the accumulation of many names of individuals connected with such activities without further identifying information. Indeed, the Agency does not have identifying information on over 96 percent of the 200,000 names referenced in the program's indices. A name alone, even a full name, or a name

coupled with a reference to an organization or another person, does not identify the subject with sufficient clarity to assure proper identification. Also, in many cases, names are incomplete or are not coupled even with past addresses. Moreover, the relatively few addresses the Agency does have are dated--at least two, but more usually, five to eight years old. Therefore, even where the subject can be fully identified, there is a high statistical probability that he has changed his address in the intervening years. This identification problem exists to even greater degree in the case of mail interceptions. To identify the individuals involved with any degree of certainty would require this Agency to undertake a large-scale domestic inquiry. Such an effort would necessarily require collecting additional information on individuals. This would of course defeat the purpose of this legislation and violate the recently issued Executive Order 11905.

These practical difficulties have serious privacy implications for the individuals concerned. An attempt to notify subjects based on information now available in Agency files would result in a great deal of misdirected mail circulating through the postal system. In addition, it is likely that many individuals may be incorrectly identified and thus be notified of the existence of information which was in fact related to another person. Indeed we have already confronted this problem even under existing procedures where we are able to solicit further identifying data from persons requesting information under the Privacy Act.

Madam Chairwoman, another question relates to the need to institute a notification program, with all its pitfalls, to inform individuals whether or not the Government maintains the specified records pertaining to them.

The Privacy Act and the Freedom of Information Act already make adequate provision for individuals to ascertain the existence of such information. This Agency has stated on several occasions that any individual or organization seeking to determine whether the Agency holds information pertaining to them may contact the Agency, and such information, as is available pursuant to the Freedom of Information and Privacy Acts, will be released. Over 9,000 people have already done so, and this system is proving an adequate method for interested persons to exercise their rights under the Acts. The volume of requests is a solid indication that the public is aware of the access specified by the Acts.

An important and desirable aspect of existing procedures is that by responding to requests, the Agency is able to determine the current address of the individual requester, and in those cases where it is difficult to match existing information with a particular individual, the Agency has the opportunity to request the additional identifying information necessary to ascertain whether information the Agency has pertains in fact to such individual. This mitigates the dual problem of accurate identification and proper and discreet notification which are inherent in the procedures proposed in H.R. 12039.

Finally, the proposed legislation would require that the person notified be provided "the option" of requiring the Agency to destroy information improperly maintained or of requesting amendment and correction of the information. The Central Intelligence Agency has stated its intention to destroy such material, including all the information which was improperly collected or maintained under the so-called CHAOS program, when the present moratorium

is lifted. Such destruction will, of course, be consistent with applicable law and Presidential directives. In addition, the Agency is in the process of reviewing all records systems to insure the information is properly held and that it is accurate, relevant, and timely. This Agency has requested the Privacy Commission to review Agency records systems to assure that they are consistent with the requirements of the Privacy Act. Accordingly, it would serve no purpose to encourage the up-dating, supplementing, or correcting of information which is bound for destruction.

In sum, Madam Chairwoman, it is my view that the notification procedures proposed in H.R. 12039 are impractical because it would be impossible to identify accurately a high proportion of the individuals involved. They are inconsistent with the spirit of the Privacy Act itself because it would be impossible to notify properly and discreetly many of the individuals whom we would be required to contact. And finally, the proposed notification procedures are simply unnecessary because interested individuals can already be informed under existing law and can be assured that records pertaining to them which are being improperly maintained will be destroyed.

Both H.R. 12039 and H.R. 169 would amend the Privacy Act of 1974 by striking out the Central Intelligence Agency partial exemption in section 3(j)(1). This section authorizes the Director of Central Intelligence to promulgate rules exempting any system of CIA records from certain requirements of the Act. My predecessor, Mr. Colby, appeared twice before this Subcommittee to explain the need for at least a partial exemption of the Central Intelligence Agency from the Privacy Act in order to protect from public disclosure sensitive intelligence sources and methods.

As you know, the exemptions in section 3(j)(1) were permissive. The Agency has determined that it will not avail itself of these exemptions except to exercise an exemption for access to information relating solely to intelligence sources and methods and to certain records relating to applicants and employees. This narrow exemption for intelligence sources and methods is based on the fact that the Director of Central Intelligence is required by statute to protect intelligence sources and methods from unauthorized disclosure. I consider this narrow exemption absolutely essential to the successful conduct of our Nation's foreign intelligence program. I assure the members of this Committee, the Congress as a whole, and the American people that the Central Intelligence Agency is completely dedicated to the policy of the Privacy Act of 1974 that information on American citizens and permanent resident aliens be collected and used only for proper governmental purposes.